

24 MAY 1993

APPENDIX G

SAMPLE

LEASE AGREEMENT

Contract No. _____

THIS AGREEMENT is made and entered into by and between _____, a Nonappropriated Fund Instrumentality (NAFI) of the United States Navy hereinafter called the LESSEE, and _____, Contractor, hereinafter called the LESSOR.

NOW, THEREFORE, the LESSEE and the LESSOR, for the consideration hereinafter set forth, agree as follows:

ARTICLE 1: The LESSOR agrees to lease to the LESSEE for its exclusive use during the term of this lease agreement, _____ (insert quantity) airplane(s) which is (are) described in Annex "A" to this lease agreement for a period of _____ (insert number) months, which airplane(s) are warranted by the LESSOR to be airworthy according to Federal Aviation Administration standards. LESSOR represents that he/she is the (sole owner) (sole owner subject to a mortgage held by _____) of the airplane(s).

ARTICLE 2: The airplane(s) provided by the LESSOR shall have, at the time of delivery:

a. The equipment listed in Annex "A" to this lease agreement.

b. A certificate from the appropriate United States agency indicating that the airplane(s) is (are) airworthy.

c. Prior to acceptance, the LESSEE shall inspect, test and flight-check the airplane(s) through its authorized agent(s). If such test or inspection reveals that the airplane(s) is (are) not equipped and/or the condition is not as stipulated, LESSEE may decline acceptance, in which case this agreement shall become null and void.

ARTICLE 3: Insurance Options

a. Option No. 1

Appendix G
To Enclosure (1)

24 MAY 1993

(1) The LESSEE agrees to maintain hull repair insurance coverage under the Navy Flying Club Insurance program following applicable Navy directives. The hull repair coverage will be maintained for the declared amount of \$_____. This declared amount will be reestablished annually (based on the effective date of this agreement) in an amount commensurate with the value of the airplane and all installed equipment listed in Annex A. The liability of the LESSEE for damage to the aircraft shall not exceed the declared value. Hull repair insurance coverage is not extended to the LESSOR in either of the following instances:

(a) When the LESSOR is in care, custody, or control of the airplane (unless at the time of damage to the airplane the LESSOR was acting in the capacity of an authorized member or participant of the Navy Flying Club).

(b) Or, if the hull damage resulted from the negligence of the LESSOR, his or her agents, servants, or employees.

(2) The LESSEE agrees to maintain public liability (both bodily injury and damage to the property of others) insurance coverage under the Navy Flying Club insurance program in accordance with applicable Navy directives. The public liability coverage, discussed in this paragraph, is not extended to the LESSOR when the LESSOR is in care, custody, or control of the airplane, unless at the time of the occurrence giving rise to a public liability claim, the LESSOR is acting in the capacity of an authorized member or participant of the Navy Flying Club.

(3) The LESSOR is not held liable for any portion of the premium assessment or deductible applicable for either the hull or public liability coverage provided under this article. No part of the rental fee provided above is allocated as a payment for such coverage.

b. Option No. 2

(1) The LESSOR shall provide hull insurance in the amount deemed necessary to cover the airplane(s). The LESSEE is (is not) responsible for the deductible amount of the insurance, (but such responsibility of the LESSEE shall not exceed _____ per incident). The LESSOR shall not hold the lessee, its agents, employees, and authorized participants in its activities liable for any damage to the airplane (except for such deductible amount provided herein).

24 MAY 1993

(2) The LESSEE agrees to maintain public liability (both bodily injury and damage to the property of others) insurance coverage under the Navy Flying Club insurance program discussed in this paragraph is not extended to the LESSOR (unless at the time of the occurrence giving rise to a public liability claim, the LESSOR is acting in the capacity of an authorized member or participant of the Navy Flying Club).

(3) The LESSOR is not held liable for any portion of the premium assessment applicable for public liability coverage provided under this article. No part of the rental fee provided above is allocated as payment for such coverage.

ARTICLE 4:

a. Option No. 1: The LESSEE does not guarantee a minimum monthly use of the airplane(s). The number of operating hours shall be computed from the _____ (insert engine recording tachometer or hour meter) installed in the airplane. The time shall be taken on the first day of each month prior to the first flight of the day. Fees due the LESSOR shall be based on the difference between the present month and prior month readings, at the rate of \$_____ per hour, less any time charged to inspections and/or maintenance as provided in Article 5 of this agreement. Payment shall be made to the LESSOR on or before the 10th day of each month for use during the preceding month.

b. Option No. 2: The LESSEE guarantees a minimum monthly utilization of _____ hours per airplane. The number of operating hours shall be computed from the _____ (insert engine recording tachometer or hour meter) installed in the airplane. The time shall be taken on the 1st day of each month prior to the first flight of the day. Fees due the LESSOR shall be based on the difference between the present month and prior month readings, at the rate of \$_____ per hour, less any time charged to inspections and/or maintenance as provided in Article 5 of this agreement. Payment shall be made to the LESSOR on or before the 10th day of each month for use during the preceding month.

ARTICLE 5:

a. Option No. 1: The LESSEE agrees to perform or have performed all 100-hour progressive and annual inspections which may become due during the term of this lease agreement and to provide all oil changes, oil, fuel, and maintenance recommended by the manufacturer or directed by the Federal Aviation

24 MAY 1993

Administration during the duration of this lease agreement. The LESSEE shall provide spare parts, major overhaul of engines and airframe, and shall be responsible for compliance with any additional directives of the Federal Aviation Administration or service bulletins which might be published during the period of this lease agreement. No portion of this maintenance shall be provided by the LESSOR. The LESSEE shall record all _____ (insert engine recording tachometer or hour meter) time expended in carrying out all responsibilities under this article to include pre- and post-maintenance engine runs, ferry time to and from maintenance facilities, if other than LESSEE's facilities, and functional check flights as required to test aircraft performance operation. Lessor shall not be compensated for _____ (insert engine recording tachometer or hour meter) time as set forth in Article 4.

b. Option No. 2: The LESSEE agrees to perform or have performed all 100-hour progressive and annual inspections which may become due during the term of this lease agreement and to provide all oil changes, oil, fuel, and maintenance recommended by the manufacturer or directed by the Federal Aviation Administration during the duration of this lease agreement. The LESSOR shall provide spare parts, major overhaul of engines, and airframe and shall be responsible for compliance with any additional directives of the Federal Aviation Administration or service bulletins which might be promulgated during the period of this lease agreement. The LESSEE agrees to release the airplane(s) to the LESSOR to permit him or her to carry out his or her record all _____ (insert engine recording tachometer or hour meter) time expended in carrying out all responsibilities under this article to include pre- and post-maintenance engine runs, ferry time to and from maintenance facilities, if other than LESSEE's facilities, and functional check flights required to test aircraft performance and operation. LESSOR shall not be compensated for _____ (insert engine recording tachometer or hour meter) time so recorded as set forth in Article 4.

ARTICLE 6:

a. This lease may be terminated by either party because of noncompliance by the other party upon written notice mailed or physically delivered to the address herein set forth.

b. This lease may be terminated for convenience by LESSEE, upon 30 days written notice mailed or physically delivered to the address herein set forth.

Appendix G

To Enclosure (1)

G-4

24 MAY 1983

ARTICLE 7: The LESSEE agrees that the airplane(s) under this agreement will be based primarily at _____ subject to the approval of the commanding officer and that proper tie-down (hangar) facilities will be used at all times for said airplane(s). The LESSEE further agrees that the airplane(s) furnished under this lease agreement will be operated only by FAA-certified mechanics and licensed pilots with ratings of Student Pilot or higher.

ARTICLE 8: The LESSEE agrees that it will assume custody of the airplane(s) indicated in Annex "A" of this lease agreement after the lease agreement has been executed by both parties. The LESSEE further agrees that it will return said airplane(s) in as good a condition as when received, normal wear and tear excepted. (See Article 2 of this agreement.)

ARTICLE 9: The delivery of the airplane(s) under this lease agreement will take place at _____. Return delivery of the airplane(s) by the LESSEE to the LESSOR, or his or her authorized representative, will take place at _____, promptly upon expiration or termination of this agreement.

ARTICLE 10: It is understood and agreed that the continued existence of the LESSEE and its successors and assigns, if any, is governed by Federal Law, regulations and the United States Navy. This agreement is automatically terminated in the event the flying club is dissolved.

ARTICLE 11: The LESSOR understands that the site at which the airplane(s) will be primarily based and access thereto from public highways are upon lands subject to the jurisdiction of (the United States). (Both the United States and the State of _____) and are governed by the Federal Laws, Navy Regulations, customs of the service and the laws of the State of _____. The LESSOR agrees to obey Federal Laws, Navy Regulations and the state laws, to the extent applicable to this transaction.

ARTICLE 12: Licenses, taxes, permits, and fees. The LESSOR is responsible for obtaining, at his/her own expense, all licenses and permits and for paying all taxes and fees as may be required by the Federal, state, and local governments. An increase or decrease in any of the costs to the LESSOR shall not be a basis for an equitable adjustment in the rental fee prescribed herein.

24 MAY 1993

ARTICLE 13: Definitions. As used throughout this lease agreement, the following terms shall have the meanings set forth below.

a. The terms "lease," "lease agreement," and "agreement" mean this lease agreement and it includes any amendments, change orders, and/or supplemental agreements with respect hereto.

b. The term "Contracting Officer" means the person executing or administering this lease agreement on behalf of the Nonappropriated Fund Instrumentality which is a party hereto or his/her successor or successors.

c. The terms "Contractor" and "LESSOR" mean the person responsible for providing the airplane(s), equipment, insurance, and/or services covered by this lease agreement to the LESSEE.

d. The abbreviation "NAFI" means the Nonappropriated Fund Instrumentality of the U.S. Government which is the LESSEE herein.

ARTICLE 14: Legal Status. The NAFI is an integral part of the Department of Defense and is an instrumentality of the U.S. Government. Therefore, NAFI contracts are U.S. Government contracts; however, they do not obligate appropriated funds of the U.S.

ARTICLE 15: Disputes

a. This lease is subject to the Contracts Disputes Act of 1978 (41 U.S.C. 601, et seq.). If a dispute arises relating to the lease, the LESSOR may submit a claim to the contracting officer who shall issue a written decision on the dispute in the manner specified in DAR 1-314 (FPR 1-1.318).

b. "Claim" means

(1) a written request submitted to the Contracting Officer;

(a) for payment of money, adjustment of lease, terms or other relief;

(b) which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

24 MAY 1993

(c) for which a Contracting Officer's decision is demanded.

c. In the case of disputed requests or amendments to such requests for payment exceeding \$50,000, or with any amendment causing the total request in dispute to exceed \$50,000, the LESSOR shall certify, at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the lease adjustment for which the LESSOR believes the Government is liable.

(LESSOR's Name)

(Title)

d. The Government shall pay the LESSOR interest

(1) on the amount found due on claims submitted under this clause;

(2) at the rates fixed by the Secretary of the Treasury, under the Renegotiation Act, Public Law 92-41;

(3) from the date the Contracting Officer receives the claim until the Government makes payment.

e. The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal or government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

f. The LESSOR shall proceed diligently with performance of this lease, pending final resolution of any request for relief, claim, appeal or action related to the lease, and comply with any decision of the Contracting Officer.

ARTICLE 16: Assignment. LESSOR may not assign his or her rights or delegate his or her obligations under this lease agreement without prior written consent of the Contracting Officer.

ARTICLE 17: Examination of Records. The LESSOR agrees that the contracting officer or his or her duly authorized representatives

24 MAY 1993

shall have the right to examine and audit the books and records of the LESSOR directly pertaining to this lease agreement during the period of the lease agreement and until expiration of 3 years after final payment hereunder.

ARTICLE 18: Modifications. No agreement or understanding to modify this lease agreement will be binding upon LESSEE unless made in writing and signed by the Contracting Officer or his or her successor.

ARTICLE 19: Advertisements. LESSOR agrees that none of his or her, nor his or her agents' advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, etc., shall state, infer, or imply that the LESSOR's products or services are approved, promoted, or endorsed by LESSEE, nor will they in any way refer to LESSEE or any other part of the U.S. Government.

ARTICLE 20: Hold and Save Harmless. LESSOR agrees to indemnify, save harmless, and defend the LESSEE from and against any and all claims, demands, actions, debts, liabilities, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to the property of and injuries to or death of any and all persons whatsoever, in any manner caused or contributed to by the LESSOR, his or her agents, servants or employees. LESSOR further agrees to indemnify and save harmless the LESSEE from and on account of damages of any kind which the LESSEE may suffer as the result of the acts of any of LESSOR's agents, servants, or employees.

ARTICLE 21: Officials Not To Benefit. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease agreement if made with a corporation for its general benefit.

ARTICLE 22: Covenant Against Contingent Fees. The LESSOR warrants that no person or selling agency has been employed or retained to solicit or secure this lease agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the LESSEE shall have the right to annul this lease agreement without liability or, at his or her discretion, to deduct from the lease agreement price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

Appendix G
To Enclosure (1)

G-8

24 MAY 1993

ARTICLE 23: Gratuities.

a. The LESSEE may, by written notice to the LESSOR, terminate the right of the LESSOR to proceed under this lease agreement if it is found after notice and hearing by the Secretary of the Navy, or his/her duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the LESSOR, or any agent or representative of the LESSOR, securing this lease agreement of securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such lease agreement.

b. In the event this lease agreement is terminated as provided in paragraph (a) hereof, the LESSEE shall be entitled (i) to pursue the same remedies against the LESSOR as it could pursue in the event of a breach of the lease agreement by the LESSOR and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his/her duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the LESSOR in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the LESSEE provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease agreement.

ARTICLE 24: This lease agreement shall not become binding or effective until it is approved by the activity commanding officer or his or her authorized representative; the aircraft is approved for inclusion in the Navy Flying Club insurance program by Chief of Naval Personnel; and Annex "A" is signed by the flying club manager and the LESSOR.

ARTICLE 25: This lease agreement consists of the following:

a. Lease Agreement (pages ____ through ____).

b. Annex "A" Airplane(s) Description (Pages 1__ through __).
(NOTE: Articles 4 and 5 may require revision based upon negotiations with the LESSOR).

OPNAVINST 1710.2E

24 MAY 1993

IN WITNESS WHEREOF, the parties hereunto set their hands on the date set forth below.

For LESSEE:

For LESSOR:

(Typed name and signature
of Contracting Officer)

(Typed name and
signature)

(Address)

(Address)

(Telephone Number)

(Telephone Number)

(Date Signed)

(Date Signed)

This lease agreement has been reviewed and determined to be legally sufficient.

(Signed: Staff Judge Advocate) (Date)

This lease agreement is approved (disapproved).

(Type name and signature
Commanding Officer)

(Date)

24 MAY 1993

ANNEX "A"

to

LEASE AGREEMENT

Contract No. _____

This ANNEX "A" is executed on this the _____ day of _____, 19____, pursuant to the provisions of the foregoing LEASE.

- a. Airplane Description:
- b. Airplane Serial Number:
- c. Airplane Registration Number:
- d. Tachometer or Hour Meter Reading on Delivery:
hours.
- e. List of Installed Equipment:

For the LESSEE:

For the LESSOR:

(Typed name and signature of Manager) (Typed name and signature)

(NOTE: Signatures to this Annex will not be official until the lease has been approved by the commanding officer and inclusion of the airplane(s) in the flying club insurance program has been approved by BUPERS.)